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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

AROR ARK O'DIAH, 07A2463,

Plaintiff,

-v-

10-CV-6592L

ORDER

C.O. NETH, Correctional Officer,
Wyoming Correctional Facility;
KONKLE ANDREWS, Sr., Correctional
Officer, Wyoming Correctional Facility;
C.O. ATKINS, Correctional Officer,
Wyoming Correctional Facility;
C.O. LUNITH, as John Doe,
Correctional Officer, Wyoming
Correctional Facility;
Captain HOLLANDER, Wyoming Correctional
Facility; Superintendent DAVID UNGER,
Superintendent, Wyoming Correctional
Facility; Dr. DEPERIO, M.D., Wyoming
Correctional Facility; Mr. WEBER,
Inmate Grievance Clerk Supervisor,
Wyoming Correctional Facility;
and C.O. VANSON, Correctional Officer,
Wyoming Correctional Facility;
C.O. R. HAHN, Correctional Officer,
Collins Correctional Facility;
and Lt. RANDALL, Collins Correctional
Facility;

Defendants.

INTRODUCTION

Plaintiff pro se Aror Ark O'Diah, currently incarcerated at Attica Correctional Facility, was directed by Order dated December 12, 2010 (Docket # 63) to file an amended complaint involving allegations occurring solely in the Western District of New York and separate from the allegations continuing in the Northern

District of New York action from which this case was severed (NDNY 08-CV-0941). Plaintiff was directed to "amend this complaint to state only allegations relating to the defendants against whom the Northern District Court transferred claims. All other claims will not be addressed by this Court." (Docket # 63). The allegations severed by the Northern District related to incidents at Wyoming Correctional Facility. As discussed in the prior Order, plaintiff was also directed to not include in the amended complaint any of the claims he was prohibited from filing by District Judge Feuerstein's Order of April 30, 2008, nor claims retained in the action in the Northern District of New York from which these claims were severed.¹ Plaintiff was warned that if plaintiff did include those prohibited claims in the amended complaint, the Court would consider sanctions, including dismissal of this action for abusive litigation practices and disregard of a Court Order.

DISCUSSION

Plaintiff's complaint, amended December 29, 2010 (Docket # 64), has been reviewed pursuant to 28 U.S.C. § 1915 and this Court's previous Order. Plaintiff has added two defendants from Collins Correctional Facility, R. Hahn and Randall, not previously included. Plaintiff has also included allegations and complaints relating to the prohibited filings. The Court therefore strikes

¹Plaintiff has three cases currently pending in this Court. Both this action and 10-CV-6705 were transferred to this Court by the Northern District of New York. Plaintiff also has 10-CV-6611 pending, which has not yet been reviewed by the Court pursuant to 28 U.S.C. § 1915.

pages five to fourteen addressing issues in the filings prohibited by Judge Feuerstein's Order. The defendants are directed to answer only pages twenty to forty-nine, regarding Wyoming Correctional Facility. The allegations on pages forty-nine to sixty-two are dismissed as duplicative of allegations regarding events at Gowanda Correctional Facility already included in action 10-CV-6705L, currently pending in this Court. Plaintiff has also included allegations on pages sixty-two through seventy-four regarding Collins Correctional Facility, where he was incarcerated after Gowanda Correctional Facility. These allegations may not be included in this action addressing unrelated alleged occurrences at Wyoming Correctional Facility. If plaintiff wishes to sue regarding events at Collins Correctional Facility, he may seek to add them to 10-CV-6705L, currently addressing allegations at Gowanda Correctional Facility or file a new action.

CONCLUSION and ORDER

For the reasons discussed above, plaintiff's allegations on pages five through fourteen, forty-nine to sixty-two regarding events at Gowanda Correctional Facility and allegations on pages sixty-two through seventy-four regarding Collins Correctional Facility are dismissed with prejudice pursuant to 28 U.S.C. §§ 1915(e) and this Court's prior Order. The Clerk of the Court is directed to file plaintiff's papers, and to cause the United States Marshal to serve copies of the Summons, Amended Complaint, and this

Order upon defendants Neth, Konkle Andrews, Sr., Atkins, Lunith, Hollander, Unger, Deperio, Weber and Vanson without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in plaintiff's favor. The Clerk of the Court is also directed to terminate defendants Hahns and Randall as parties to this action.

Pursuant to 42 U.S.C. § 1997e(g)(2), the defendants are directed to answer only pages twenty to forty-nine, regarding Wyoming Correctional Facility.

SO ORDERED.

S/ Michael A. Telesca

MICHAEL A. TELESKA
United States District Judge

Dated: March 14, 2011
Rochester, New York